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VOL. LXXVII. **Saturday, September 2, 1933.** No. 35

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Current Topics.

Scottish Sheriffs.

As most readers are doubtless aware, the Scottish sheriff does not correspond to the English official bearing that title, but is the equivalent of our county court judge, with this difference, that he exercises a much wider civil, and has, moreover, an extensive criminal, jurisdiction. In view of this fact, it is easy to sympathise with the views expressed by a writer in the current number of the *Scottish Law Review* that it is somewhat hard that while each English county court judge receives a salary of £1,500 a year, his Scottish *confrère's* salary varies somewhat but averages only £900 a year. As the writer truly says, if the Scottish sheriffs were paid on the same basis as their English brethren the field of choice in the event of vacancies occurring would be more extensive than it is at present. But the article is devoted, not so much to pointing out this disparity in the matter of remuneration between the English and Scottish judges, as to call attention to other matters in relation to the position of the Scottish sheriffs. First, it is insisted that in the appointments to the office too much regard has been had in the past, and possibly the position is still much the same, to political considerations. The appointments rest actually, although not theoretically, with the Lord Advocate of the day, whose choice cannot always be independent, as he is bound to take into account political service as well as professional competence. No doubt political considerations ought not to count in the matter of judicial appointments, but human nature being what it is, it is inevitable that, other things being equal, sympathy with the views of the party in office, and in which consequently patronage is vested, has a preponderating effect.

The Double Sheriffship.

The second matter to which the writer draws attention is the double sheriffship. This may require a word of explanation for English readers, seeing that we have no corresponding position here. In Scotland, owing to historical considerations, each county had a sheriff principal and a sheriff substitute, an appeal lying from the decisions of the latter to the former and from him to the Court of Session, although a litigant might, if he so chose, appeal direct from the sheriff substitute to the Court of Session. During recent years the tendency has been to reduce the number of sheriff principals by uniting several counties under one sheriff principal, and again and again reformers have advocated his abolition altogether. As the writer of the article says, "the single-man appeal is unsound in principle. The joint opinion of several men, reconsidering the judgment of one man, possesses value; but where the substitute says 'No' and the principal says 'Yes,' the result is a futility, unless the litigant has reason to think that the one judge is more intelligent than the other." Another odd thing about the position of the sheriff principal is that, except in the two counties of Edinburgh and Lanark, he is entitled to continue in practice at the Bar save in cases emanating from his own sheriffdom, while the substitute is a whole-time judge. Old institutions have, as we know, a wonderful vitality, and it may be that the double sheriffship may continue to exist in Scotland for some time yet, but it can scarcely be said to serve any very useful purpose, the sheriff substitute being quite competent to perform all the duties of judge of the sheriffdom to the entire satisfaction of the community.

Swimming Baths and the Ministry of Health.

Stimulated by the very warm summer we are enjoying, the popularity of open-air swimming baths has increased to such an extent that the provision of one is now regarded as a necessary addition to the amenities of any populous district. Until the last year or two practically all such facilities were provided at the cost of the rates by local authorities under the Baths and Washhouses Acts, 1846 to 1899, and supervised under statutory rules. But now there are a considerable number of swimming baths and pools provided by private capital, and attached to country clubs and to the new type of wayside restaurant which originated in America and is known as a "road-house." These latter, which are the direct result of modern motor traffic and a new freedom of manners, such as could not have been imagined a few years ago, have been so crowded with patrons, sometimes until after midnight, that *The Daily Mail* has discovered in them a new danger to health, and commissioned experts to take samples of the water and analyse and report upon it. The result is that while most of these places are given a clean bill, some of them are declared to be unsafe to venture into, either from lack of change or filtration, or over-chlorination of the water. The Ministry of Health admits that it cannot interfere, as all private baths are outside its jurisdiction, and *The Daily Mail* demands fresh legislation to protect the public from possible epidemics. This would be a difficult matter and take some time to accomplish. In the meantime it would be desirable for the proprietors of all privately owned swimming baths which are open to the public on payment of a fee to obtain from time to time certificates of sanitation from the local medical officer of health. It would not be practicable to publish a black list of insanitary baths which had failed to obtain what sailors call "pratique," without risk of litigation, but all baths which obtained it would not be slow to advertise the fact, and those which did not publish and post up an

up-to-date report that their waters were perfectly safe to bathe in would soon find a falling off in their patronage. It is just as easy to motor out to one swimming bath ten or twenty miles away as to another.

Pension Schemes and Clauses against Competition.

THE decision of the Court of Appeal in the recent case of *Wyatt* v. *Kreglinger & Fernau* [1933] 1 K.B. 793, has, not unnaturally, caused a certain amount of alarm in the minds of trustees of large pension schemes maintained by contributions from employers and employees, for nearly all these schemes contain a clause intended to prevent a former employee who has retired on a pension from starting again in another business which directly competes with that of his previous employers. In *Wyatt* v. *Kreglinger*, it may be remembered, the plaintiff, who had been many years in the employment of the defendants, retired in 1923 and was given a pension of £200 a year, with liberty to undertake any other employment or enter into any business, except in the wool trade, in which he had been engaged most of his life. In 1932 the defendants for financial reasons were compelled to discontinue the payment of the pension, or "allowance" as they described it. The plaintiff thereupon sued the defendants for damages for breach of contract. MACNAGHTEN, J., held that the £200 a year was a voluntary allowance and there was no enforceable contract. The Court of Appeal held, by a majority (SCRUTTON, L.J., dissenting), that the correspondence between the parties created a contractual obligation, but unanimously, that assuming it did so, that the agreement was in restraint of trade and contrary to public policy, as it prevented the plaintiff in engaging in the wool trade for the rest of his life in any part of the world. The result was that it was void, and the plaintiff lost his £200, but was free, at the age of seventy, to go back into the wool trade. The decision has encountered some criticism, but not having been appealed, is authoritative. The Prudential Assurance Company, which had a pension scheme involving over 10,000 contributors, for which the company provided a very large annual sum, now applied to the court by summons to have it determined whether a clause in that scheme was or was not valid, and if invalid, whether the entire scheme was thereby invalidated. The clause provided that a pension should cease if the pensioner should directly or indirectly be engaged in any business in competition with or adverse to the Prudential, and that in that event the pensioner was to be entitled to the return of all his contributions, less any money received by him in respect of his pension, but without interest. It would seem that the *Kreglinger Case* was clearly distinguishable, the clause simply applying the old adage that a pensioner could not eat his cake and still have it. But EVE, J., before whom the summons came, decided (see 77 SOL. J. 557) that it was unnecessary to decide whether the clause, taken by itself, was valid or invalid, for the pension scheme could not possibly be destroyed because one particular clause in it might one day be discovered to be unenforceable. The scheme was therefore valid, the case being analogous to that of a void limitation in a will or settlement. The decision will no doubt apply to many other pension schemes, the clause in question being practically common form.

Liability to Maintain a Husband.

A SOMEWHAT unusual case has been reported from Brighton by a London evening paper. Application was made by the Local Public Assistance Committee for an order on a woman, a school teacher, to pay £1 a week towards the maintenance of her husband, then costing the ratepayers about £1 3s. a week in a mental institution. The wife was stated to have a weekly income of just over £4. She had a daughter of sixteen who had just won a scholarship in a secondary school, and she was anxious to send the girl to a training college, with the view that she also might become a teacher. The presiding magistrate suggested that she should go into domestic service instead, and finally the Bench made an order on the wife for 15s. a week. Since by the common law a wife had no property of her own, the burden imposed on near relatives to maintain each other in case of impotence, old age, etc., by the Poor Relief Act of 1601 did not extend so as to make a wife liable to keep her husband off the rates. She was made so liable by the Married Women's Property Act, 1870, if she had separate property, and s. 20 of the Married Women's Property Act, 1882, embodied the same provision, until repealed by the Poor Law Act, 1927, and replaced by s. 41 (4) of that Act. This sub-section has in turn been replaced by s. 14 (4) of the Poor Law Act, 1930, but the liability in all these statutory provisions was only imposed on a married woman "having separate property." The point was made for the defence that a woman's weekly salary could not be classed as such property, but appears to have been over-ruled. If the case should be taken further, the decision of a Divisional Court would be of interest. In *Anderson* v. *Hay* (1890), 7 T.L.R. 113, it was held that alimony was not separate property of a wife, and could not be charged with her debts. A court could reduce or possibly even discontinue alimony in suitable circumstances, but so no doubt could an employing authority reduce a teacher's salary, or discontinue her services. In respect of the girl, in the long run it would probably be in the ratepayers' interest for her to develop and exploit the talent evidenced by the scholarship, so that she also could soon assist in maintaining her father, if unfortunately he was obliged to remain in the institution.

The Predecessor in Succession Duty.

IN *Attorney-General* v. *de Trafford* (*The Times*, 24th July), the Court of Appeal had to deal with a knotty puzzle arising on the latter portion of s. 15 of the Succession Duty Act, 1853. The point was whether certain beneficiaries under a re-settlement and other documents derived title under the late Sir HUMPHREY FRANCIS DE TRAFFORD, as predecessor, or his son, Sir HUMPHREY EDMUND, and on it depended the question whether these persons paid £1 per cent. duty as succeeding to the father, or £5 per cent. as succeeding to the son. The main difficulty lay in the apparent conflict of certain authorities. The interpretation of the section is discussed in "Hanson's Death Duties" (8th ed., pp. 494-7), and is noted as "one of the most difficult problems presented by the Succession Duty Act." In the present case FINLAY, J., in the court below, gave his own view that the decision in *Attorney-General* v. *Cecil* (1870), L.R. 5 Ex. 263, was irreconcilable with *Wolverton* v. *Attorney-General* (1898), A.C. 535, and *Northumberland* v. *Attorney-General* [1903] A.C., 406, but in *Attorney-General* v. *Assheton Smith* [1924] 2 K.B. 25, ROWLATT, J., had held that *Attorney-General* v. *Cecil* was still a binding authority. Holding that the facts in the case before him were indistinguishable from those in *Attorney-General* v. *Assheton Smith*, for the purposes of his judgment, FINLAY, J., followed ROWLATT, J., and decided for the Crown, but expressed hope that the case would be taken to the Court of Appeal. That court has now, overruling the judgment which FINLAY, J., felt himself constrained to give, definitely held that *Attorney-General* v. *Cecil* is inconsistent with the previous decision of *Lilford* v. *Attorney-General* (1867), L.R. 2, H.L. 63 (not brought to the attention of the judges) and the subsequent ones of *Wolverton and Northumberland*. In the result, therefore, *Attorney-General* v. *Assheton Smith* is overruled, and *Attorney-General* v. *Cecil* can no longer be regarded as authoritative. The main issue in these cases has been whether the predecessor is the original settlor or a reversioner deriving title under him, and, since the settlor is the choice of the House of Lords, and he is usually the ancestor of the beneficiaries, the reversioner being a person of their own generation, the result favours the subject as against the Crown, though it remains to be seen whether the Attorney-General will take the case further.

Criminal Law and Practice.

THE TAKING OF FINGER-PRINTS.

THE majority decision of the Justiciary Court of Appeal at Edinburgh that the taking without his consent, and by force, if necessary, of the finger-prints of an untried, and, therefore, presumably innocent prisoner is legal, is an important pronouncement as affecting the liberty of the subject.

This liberty, it is agreed, must be limited in certain cases, where such limitation is needful for the benefit of the community. Persons suspected of crime may, in certain cases and upon certain formalities being observed, be arrested and detained. The fact that they are ultimately found to be innocent by the tribunal before which they are tried will not of itself show that their arrest and detention was unlawful. The matters which must be proved in order to establish a case for false imprisonment show this. But although the subject may be arrested in certain circumstances and kept in "lock-up" or jail pending judicial investigation of the charges against him, his arrestors or jailors cannot do what they like with him in the meanwhile. They may adopt all reasonable means required to secure him and retain him in custody. They may compel him to submit to proper sanitary regulations as bathing and clothing which the conditions call for. But beyond the necessary implication of safe detention under healthy conditions, it is conceived that they should not go, without statutory authority. For example the use of physical torture is repugnant to our law. The mental torture of the so-called "third degree" is frowned upon.

Even when in Victorian days it was deemed advisable to methodise the detection of crime, and for that purpose to collate particulars of criminals, it was thought necessary to provide for this by statute.

The Prevention of Crime Act, 1871, 34 & 35 Vict. Ch. 112, s. 6, authorised the keeping of a register of criminals, the particulars to be contained in which were to be prescribed by the Secretary of State. It was even thought necessary by sub-s. (6) to authorise regulations being made for the photographing of prisoners and to enact by sub-s. (10) that prisoners refusing to obey such regulations "should be deemed guilty of an offence against prison discipline."

When later it was found desirable to extend the scope of the 1871 Act, the Penal Servitude Act, 1891, 54 & 55 Vict. Ch. 69, was passed to give the Secretary of State power to provide for the "measuring and photographing of all prisoners who may for the time being be confined in any prison," and the importance of this innovation was, it is submitted, recognised by the concluding words of s. 8: "All regulations made under this section shall be laid before both Houses of Parliament as soon as practicable after they are made."

The draftsmen of the two statutes, however, could not anticipate the adoption of the finger-print method of the identification of criminals which was introduced into the country in 1901.

If the taking of the measurements and the photographing of an untried prisoner need statutory justification, such undoubtedly exists, but the procedure must be in accordance with the regulations properly laid down for it.

Then, does the word "measurements" cover finger-prints? This seems open to argument. The statute, if not strictly a criminal one, ought to be strictly construed, affecting as it does the liberty of the subject.

If it does not cover "measurement" or if, as in the Scottish case just decided, the finger-prints were taken contrary to the regulations, it is necessary, in order to justify their taking, to maintain that they may be taken under the common law.

The point came before the Justiciary Appeal Court in this way. A prisoner's finger-prints were taken against his consent and without a warrant, which latter was apparently necessary under the regulations. For these regulations see "Stone's Justices Manual," 65th ed. (1933), p. 1342. At the trial it was objected on the prisoner's behalf that the finger-prints in question, having been unlawfully obtained, were not admissible in evidence against him. The sheriff upheld the objection, but was, as has been indicated above, overruled by the Appeal Court.

The Lord Justice General (with whom the Lord Justice Clerk, Lord Sands and Lord Morison concurred) gave as his opinion that there was no question of the legality of the respondent's arrest and of his detention in the cells. Then where was the difference between observations (to which respondent would have had to submit) of personal marks or pecularities, had there been any such, connecting him with the crime, or identifying him with the criminal, and observations taken (equally without his consent) of the disposition of the ridges on the skin of his fingers, in order to see whether they coincided with the finger impressions on the bottles? Observations of the former kind, without consent or magistrate's warrant, involved no violation of the common law rights of an accused person. On what ground could it be said that observation of the latter kind, similarly made, did involve such a violation? It was true of course that the importance of observing the ridges on the skin of the fingers as a means of detecting crime had only been recognised in recent years, but that could matter nothing.

Lord Hunter strongly dissented. He said it was suggested that the taking of finger-prints was useful in enabling the police to detect crime which might otherwise go undetected. That might explain why the police were anxious to possess the right. It afforded no excuse for their doing what was not warranted at common law. In a country where a system of criminal jurisprudence prevailed which protected the individual against unfair abstraction of evidence from him, one would naturally expect that the obtaining and use of such evidence by the police would be regulated by provisions that would protect the individual against any unfair use. His impression was that underlying the statutory provisions was the doctrine that police action against the personal liberty of the subject should, except in exceptional circumstances, only proceed under a magistrate's warrant. The Legislature might, in the general interests of the community, curtail the liberty of the subject. The court had no such right. His lordship was unable to agree to an expression of judicial opinion approving a police practice which he considered fundamentally objectionable, and contrary to the common law doctrine of personal liberty. Such a practice was not countenanced in England, and he thought it unfortunate that the law of Scotland should be declared to be different in a matter of that sort from the law of England.

The position is thus an interesting one. Does the common law of England now differ, as Lord Hunter appears to think it does, from that of Scotland on this question of the liberty of the subject? If it does not, it would appear that the police may obtain, forcibly and without warrant, the prints of anyone they take into custody, which proposition might involve startling consequences.

The present practice, as laid down in "Stone's Justices Manual," *supra*, would be clearly supererogatory. There would be no need to get a police officer "of not lower rank than superintendent" to make application in writing where no objection is made by the prisoner. Nor, if the latter objected, would it be necessary to get a warrant from the Secretary of State or a Justice of the Peace. Further, the destruction or handing over to an acquitted prisoner of the said finger-print impressions could be dispensed with. Of course, it might be urged by enthusiastic detectives that, accepting the view of the infallibility of this method of identification, it might even be worth while, in the interests of the community, to have in the Police Records what a colonial chief justice has termed "the unforgeable signature" of every possible wrong-doer.

What is an Agricultural Holding?

QUESTIONS arise from time to time as to what is actually included in the term "agricultural holding." The definition in the Agricultural Holdings Act, 1923, s. 57, is not by any means complete, and in practice the question as to whether a particular parcel of land is an "agricultural holding" within the meaning of the statute is one of fact to be determined by an arbitrator—if indeed, he is sufficiently versed in his duties to be able to decide it, for cases often arise in which the decision of such a question is anything but easy. The definition given in s. 57 is as follows:—

> "'Holding" does not include an allotment garden or include any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market gardening, but, except as aforesaid, means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment, held under the landlord."

This merely repeats s. 48 (1) of the Agricultural Holdings Act, 1908. Now in 1918, a difficulty arose (see *Lancaster* v. *Macnamara, In re* [1918] 2 K.B. 472). Property comprised in a lease included a farm and an inn in which a separate business was carried on, so that the demised premises taken did not constitute a holding within the definition for purposes of the statute. As a result of this contretemps when the law was revised in 1923 a special section (33) was added to the new Act as follows:—

> "Where the land comprised in a contract of tenancy is not a holding within the meaning of this Act by reason only of the fact that the land so comprised includes land which, owing to the nature of the buildings thereon or the use to which it is put, would not, if it had been separately let, be a holding within the meaning of this Act, the provisions of this Act relating to compensation for improvements and disturbance shall, unless otherwise agreed in writing, apply to the part of the land exclusive of the non-statutory land as if that part were a separate holding."

So that does away with the difficulty arising in cases where part of what is demised is obviously, if taken alone, an agricultural holding. (But, incidentally, it is to be noted that the section varies the general provisions of the Act as to compensation.) But there are other difficulties which may be noted. Thus, in the Rating & Valuation (Apportionment) Act, 1928, we have the following definitions of "agricultural land" and "agricultural buildings," which are included in the definition of an "agricultural hereditament":—

> "Agricultural land" means any land used as arable, meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one quarter of an acre used for the purpose of poultry farming, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act, 1922, but does not include land occupied together with a house as a park, gardens (other than as aforesaid), pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse; and for the purpose of this definition the expression "cottage garden" means a garden attached to a house occupied as a dwelling by a person of the labouring classes:
>
> "Agricultural buildings" means buildings (other than dwelling-houses) occupied together with agricultural land or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon."

It may be observed that this definition of an agricultural hereditament differs materially from the definition of an agricultural holding, because it includes allotment gardens within the meaning of the Allotments Act, 1922, the definition in the Act of 1923 specifically excluding allotment gardens and moreover making no mention of cottage gardens which are included in the Apportionment Act definition. It would therefore appear that for the purposes of the Agricultural Holdings Act, 1923, strict adherence must be made to the definition that statute contains of a "holding" and to the legal decisions given relative thereto. No doubt many questions will arise—some indeed have already arisen—for instance it has been asked whether a shooting box with a field attached constitutes an agricultural holding and again whether a house used as a private residence with a field attached thereto comes within the definition. These are not easy problems to determine, but to some extent the earlier portion of the definition of "holding" will suffice to knock out any suggestion that a garden attached to a house constitutes an agricultural holding because it excludes "an allotment garden or any land cultivated as a garden unless cultivated wholly or mainly for the purpose of trade or business or market gardening." Now, an allotment garden, it may be observed, is "an allotment not exceeding 40 poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family." Nevertheless, there are various directions in which the issue may arise. In the case of *Russell* v. *Harding's Arbitration* (1922), 128 L.T. 476, a farm-house had been sublet for the purposes of a private guest-house whilst the farmer continued to cultivate the land. Here it was held that the mere effect of this sub-letting of a house (which was done with the approval of the landlord) did not take the holding as a whole out of the category of the Act.

Quite a number of cases have arisen out of the meaning of the expression "market garden." The definition of "holding" indicates a market garden as an agricultural holding, and therefore any piece of land which can be brought within the definition of market garden becomes an agricultural holding. Now the section (57) which defines a holding also defines a market garden as being "a holding cultivated wholly or mainly for the purpose of the trade or business of market garden." One of the determining factors obviously is that it must be used for the purpose of trade or business. In the case of *Bickerdyke* v. *Lucy* [1920] 1 K.B. 707, the question arose as to whether a private garden attached to a mansion from which some of the produce was occasionally sold was a market garden or not, and it was held that where the garden is cultivated mainly for the use of the owner or occupier and not wholly or mainly for the purpose of sale, that cannot be a market garden within the meaning of the section. A fruit farm cultivated for the purpose of selling fruit and using it for private consumption would undoubtedly be a market garden; but it was held in the Scottish case of *Watters* v. *Hunter* [1921] S.C. 310, that land let for the purpose of growing bulbs was not a market garden within the meaning of the section. It is to be observed, however, that so long as the land is "wholly or mainly" cultivated for the growing of fruit, vegetables or flowers for marketing, it will come within the description; and where part of a holding only is used for this object and the remainder is agricultural in the ordinary sense, the part cultivated as a market garden may be separated from the other for the purposes of compensation provided by the statute. This was definitely settled in *Callender* v. *Smith*, 37 Sc. L.R. 890.

There is another direction in which the definition of an agricultural holding may be of importance, and that is in regard to income tax. In the case of *Lord Glanely* v. *Wightman* (*Inspector of Taxes*) *vide* THE SOLICITORS' JOURNAL, 25th March, 1933, at p. 215, where the question as to whether a stud-farm

was assessable under Sched. B as an ordinary agricultural holding or whether the owner should be assessed on the profits which he made out of service fees earned on the farm, it was contended that the profits from the stud-farm operations were profits from the appellant's occupation of the land, and that income tax assessed and charged in respect of land covered the tax payable in respect of any profit from service fees. The case is an interesting one, and had been fought up to the House of Lords where the landowner succeeded; and Lord Buckmaster, in delivering judgment, said that the occupation of the land in this case being for the purpose a stud-farm, the use of stallions on the farm could not be taxed unless it could be said that it constituted something distinct and separable from the purpose of the occupation. The case provides a good example of the side-issues which may emanate from the occupation of land which normally would be taken to constitute an agricultural holding.

Liability of Occupiers for Dangerous Premises.

LIABILITY TO INVITEES.

THE liability which arises towards a person entering upon premises in pursuance of a contract has already been considered in an earlier article (*ante*, p. 595), where it was pointed out that the degree of liability must depend upon the terms of the particular contract and was sometimes little, if any, greater than the liability to an invitee. This latter liability it is now proposed to consider briefly.

The leading case upon the subject is, of course, *Indermaur* v. *Dames*, L.R. 1 C.P. 274; 2 C.P. 311, where the occupier of a factory was successfully sued for damages by the plaintiff, who was the servant of a gas fitter employed by the defendant and who fell through an unfenced opening while testing gas-fittings on the defendant's premises. The plaintiff was on the premises as an invitee, for he was, in the words of Willes, J. (1 C.P., at p. 285), "a person on lawful business in the course of fulfilling a contract in which both the plaintiff and the defendant had an interest," such interest being, of course, pecuniary or material. The most common instance of such a relationship is when a customer enters a shop. It is clear that the entry is not in pursuance of any contract, but it is equally clear that the relationship is purely of a business nature. It is not necessary to multiply instances. No better description of what constitutes an invitee can be found than in the well-known words of Willes, J., in *Indermaur* v. *Dames*, L.R. 1 C.P., at pp. 285-288. After this description the learned judge (at p. 288) thus defines the duty of an occupier to an invitee, when he says that the invitee ". . . using reasonable care on his own part for his own safety is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know . . .," the question of whether such care has been taken being, of course, a question of fact.

At first sight these words appear clear enough, but in considering them the courts have discovered an ambiguity and have put different interpretations upon them, resulting in two conflicting lines of authority. In *Cavalier* v. *Pope* [1906] A.C. 428, Lord Atkinson says at p. 432 that the facts then before the House of Lords did not come within the principle of *Indermaur* v. *Dames* (*supra*), because to do so it is necessary ". . . that the injured person must not have had knowledge or notice of the existence of the danger . . ." This appears to be interpreting the duty towards an invitee as merely a duty to bring the danger to his knowledge or notice, in other words merely a duty to warn, and this interpretation was accepted by the Court of Appeal in *Brackley* v. *Midland Railway Company* [1916] 85 L.J. K.B. 1596, a case in which Lord Atkinson's words were quoted and applied to a plaintiff who clearly knew of the risk she was running, namely, that of slipping on frozen snow on the company's footbridge, and accordingly needed no warning. Throughout the judgments the duty is plainly treated as a duty to warn. In two of the judgments reference is made to the court's own prior decision in *Norman* v. *Great Western Railway* [1915] 1 K.B. 584, which is cited with approval as giving the same interpretation of *Indermaur* v. *Dames* (*supra*), but when one looks at *Norman* v. *Great Western Railway* (*supra*) it is clear from various passages that the court there interpreted the duty as being somewhat higher, namely, to take reasonable care that the premises are reasonably safe for persons using them in the ordinary way and with reasonable care.

Subsequent decisions have not been very helpful in discriminating between the two lines of cases. In *Mersey Docks and Harbour Board* v. *Procter* [1923] A.C. 253, Viscount Cave, L.C., at p. 259, defines the duty as being "to make reasonable provision for that person's safety," there preferring the higher duty, but almost immediately he refers to the invitee as being entitled to expect the use of "reasonable care to protect him from any unusual danger known to the company and not known to or reasonably to be expected by him," a passage which at first sight seems to recognise only a duty to warn, since once there has been a warning the danger is known and the invitee can guard himself against it.

It is, however, submitted that the higher duty is the true interpretation for the following reasons:—

(1) Viscount Cave in the second passage uses the phrase "protect him from," not merely "warn him of." Looked at in this way the two passages are consistent, for protection may be more than warning. If we read the passage thus, coupled with the earlier passage, it would appear to lay down the duty as being to do more than warn of a concealed danger. The duty would seem to be to protect the invitee from the danger by making the premises safe before he arrives.

(2) If the duty is merely to warn, it is really no greater than that owed to a licensee. This, it is submitted, is absurd, since it takes no account of the fact that the invitee enters the premises for business rather than pleasure, which is the chief point of difference between him and a licensee. It is sometimes sought to say that if the duty be to warn it is higher than that owed to a licensee because it extends to concealed dangers which the occupier knows or ought to know, and not merely those actually known to him. This seems to be a distinction without a difference, since it seems to be a general principle that if you ought to know something you are deemed in law to know it.

This, it is submitted, is the true interpretation of the law, though a clear and authoritative pronouncement of the House of Lords would be welcome to the profession as a whole, if not to writers of controversial articles.

Statutory *Cy-près*.

[CONTRIBUTED.]

WHENEVER there is an apparent conflict between a statute and the wishes of a testator, an interesting problem is raised. Though it is of course, the rule of English law that a statute must prevail wherever there is conflict, there have been cases, e.g., *Walsh* v. *Secretary of State for India*, 11 W.R. 823; 10 H.L. Cas. 367, in which, by extremely strict construction of the statute, the rule has almost been set aside if not actually broken.

It may be interesting to consider once again this famous case, if only to see how far the more modern cases appear to have departed from it. Lord Clive, the famous victor of Plassey, covenanted with the East India Company to give them a very large sum for the purpose of providing pensions for those in its employ. This sum was to revert to Lord Clive and his heirs if ever the company ceased to own ships or to maintain an army, both of which events happened shortly after the

Indian Mutiny. By the Government of India Act (1858) the Crown was bound by all the obligations of the company, fiduciary or otherwise. It was held by the House of Lords that the covenant, being a private one between Lord Clive and the Company, could only be affected by a direct enactment. They further held that the Act did not thus directly apply, and that as the company had failed to maintain ships and an army, the fund had become payable to Lord Clive's representatives.

Such then was the view taken by the House of Lords seventy years ago, and followed in a number of subsequent cases. In passing, it may be remarked that it is very doubtful whether this decision carried out the wishes of Lord Clive himself. The doctrine thus enunciated in *Walsh's Case* received its first shock in *Re Bowen* [1893] 2 Ch. 491. In this case the testator, who died in 1847, bequeathed two sums of money to trustees upon trust to establish certain Welsh day-schools, but with a proviso for a gift-over if the Government ever established a general system of education. Stirling, J., held that the gift-over failed for perpetuity, and that as the testator had made an immediate disposition in favour of charity in perpetuity, he must follow the rule in *Pearks* v. *Mosely*, 5 A.C. 714, and apply the money *cy-près*.

Thus was taken the first step towards what may, perhaps, be described as a statutory *cy-près* doctrine, which may be very shortly stated as follows: In the event of a statute coming into force which, on the face of it, brings a certain charity to an end, then the money shall be applied *cy-près* if any indication to that effect can be found within the statute. But for the decision in *Walsh* v. *Secretary of State for India*, *supra*, it is true, this would appear to be axiomatic and not worth stating.

The rule as stated seems to have been applied by Maugham, J., in the recent case of *Re Talbot*, 49 T.L.R. 462, the facts of which appear worthy of some detailed study. The testator, who died in 1928, directed that, after the death of his wife, his trustees should invest a sum of £2,000, and apply the income in augmenting the salary of the minister of a certain United Methodist Chapel, with a proviso for a gift-over in the event of a union of the United Methodists with any other religious body. The testator's wife died in 1929. By the Methodist Church Union Act, 1929, the United Methodists did in fact unite with two other bodies to form the Methodist Church.

Here, then, would appear to have been precisely the set of circumstances for which the testator had provided in his will. Maugham, J., however, held that the gift continued for the benefit of the ministers of the said chapel. He based his judgment principally upon s. 18 of the Methodist Church Union Act, 1929, by which "all personal or moveable property . . . at the date of union . . . held in trust for or on behalf of the United Methodist Church . . . or for the purposes of any charity subsidiary or ancillary to (that Church) shall as from that date be deemed to . . . be held in trust for the purposes of the Methodist Church or the . . . charity subsidiary or ancillary to the Methodist Church nevertheless in other respects upon the same trusts . . . as those upon with and subject to which the same were previously held so far as circumstances will permit."

This case need not necessarily be regarded as being in direct conflict with *Walsh's Case*, *supra*, though at first sight it may appear to be. All that was laid down in the earlier case was that the statute must directly affect the charity. When exactly a statute may be described as doing this is a difficult question, and one on which different judges may well have quite widely divergent views. *Re Talbot*, *supra*, however, does seem to put the seal upon the doctrine of statutory *cy-près* and shows that the tendency towards which modern judges are leaning is very different from the view taken by the House of Lords in *Walsh's Case*. Nor can it be said that there is any danger that this tendency may result in doing any grave injustice to the wishes of testators.

Company Law and Practice.

Rectification of the Register of Members.

From time to time I have endeavoured in this column to call the attention of those who have the control of the mechanism (if I may be permitted such a simile) of either public or private companies in their hands to the importance of observing very closely the statutory formalities imposed by the Companies Acts. We have noticed the penalties exacted under those Acts for non-compliance with the provisions relating to the various registers which must be kept. Among those registers there is naturally none more important than the register of members, and I propose this week to show how important it is that this particular register should be accurately and promptly entered up by the responsible person in the company. It is a familiar subject to many of us, but not all may perhaps realise that a register of members which is either inaccurately or not fully entered up may result in the company being ordered to pay substantial damages at the suit of an aggrieved party.

Section 100 of the Companies Act, 1929, is the section giving the court power to rectify the register of members and to award damages. It provides as follows: (1) If (*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or (*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member; the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register. (2) Where an application is made under the section, the court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved. Sub-section (1) reproduces s. 32 (1) of the Companies Act, 1908, and it has been held by Astbury, J., in the case of *Burns* v. *Siemens Brothers* [1919] 1 Ch. 225, that the section is not exhaustive, and does not prevent the court from altering the register in cases other than those specified therein. In that particular case two members, B and H, were the holders of all the company's shares except seven held by signatories. Under the articles the first of two joint holders upon the register was alone entitled to exercise the voting rights in respect of the shares jointly held, and the second-named joint holder could neither vote nor be appointed proxy, so that if the first-named holder was ill or absent the voting power of the shares was lost. Astbury, J., held that, in the circumstances, B and H were entitled to have their joint holding split into two parts with their names in different orders upon the register in respect of the two parts, and he ordered rectification of the register accordingly.

The jurisdiction of the court under this section is summary, and where there is no dispute as to the right of a member to have his name entered upon the register, or, alternatively, to have it removed, there is no difficulty. "The court" for the purposes of the section means the court having jurisdiction to wind up the company—see s. 380 of the Act. If the court makes an order for rectification of the register, the order must be notified to the Registrar of Companies in accordance with the provisions of sub-s. (4). But if, on the other hand, rectification is refused, the court will not give damages upon a motion under this section, and the aggrieved party must bring an action. The court has, however, power under sub-s. (3) to determine any question relating to the title of any party to the application by motion under the section. Disputes as to the register may be said to fall into two classes: (1) disputes between members of the company and the company itself, and (2) disputes between the members of the company and persons claiming to be members. There are a very great number of decisions affecting both these two classes of cases dating from the similar section which was included in the Companies Act, 1862. There is no doubt that the section may be invoked in determining disputes under

class (1), although the court will not always, especially if the case raises complicated issues, determine it upon motion, but will refuse the motion without prejudice to the action—see, for instance, *Simpson's Case*, 9 Eq. 91, where Vice-Chancellor Malins refused such a motion upon the grounds that the case was one of so much doubt and difficulty, involving as it did the disputed construction of documents, that the court could not make the order under its summary jurisdiction. But where the aggrieved party shows a clear right, the court will not hesitate to exercise its summary jurisdiction under the section, and will, furthermore, be loth to refuse an order and leave an action to be brought.

As to the jurisdiction in class (2), that is in the case of disputes between members and alleged members of the company, there is considerable doubt whether the court can proceed under this section. The dispute in this class of case is really as to the equities between two members. Cairns, L.J., in *Ward and Henry's Case*, 2 Ch. 431, thought that the jurisdiction given by the section (he referred to the similar section in the Act of 1862) was confined to cases where the register was incorrect through default on the part of the company. Turner, L.J., in the same case, expressed the view that the jurisdiction given by the section was general, and that the court had a discretion as to whether it would exercise it or not. In the later case of *In re Tahiti Cotton Company*, 17 Eq., at 276, Jessel, M.R., preferred the view taken by Lord Cairns. He thought that there was no jurisdiction under the section to decree specific performance of a contract to take shares, and that the jurisdiction did not include the decision of questions between the applicant and third parties. The two views are diametrically opposed, but whichever may prevail, it is at least clear that the court will not entertain a motion under the section between two rival claimants where the case is complicated and difficult. It is also clear that the court has a discretion under the section, and that if it is of the opinion that the circumstances of the case necessitate the bringing of an action to settle the matters in dispute, it can decline to proceed under the section upon an application by motion. The object of the section, and of the previous sections in the older Acts which it replaces, is to enable the court to avoid the inconvenience and injustice which might arise from capricious or frivolous objections on the part of companies to complete the registration of their shareholders. But it does not give every shareholder a right *ex debito justitiae* to this remedy: see *British Sugar Refining Company.*, 3 K. & T. 408.

The section may be applied after the company has been wound up, for r. 203 gives the court power to rectify the register in a winding up. But an application under the section after the company has been wound up, to which the company is a respondent, requires the leave of the court, in accordance with the provisions of s. 117. If leave is given, the section is applicable, and may be made retrospective: see *Sussex Brick Company* [1904] 1 Ch. 598. But in *Sichells Case*, 3 Ch. 119, where, owing to the default of the company, a transfer had not been registered before a winding up, Lord Cairns refused to rectify the register on the application of the official liquidator whatever may have been the right of the transferor to have it rectified; for he held that the official liquidator in such cases represents only the company, to whose default the error is owing, the body of contributories having no interest in the question except through the company, and the creditors having no direct equity against a person who has never been held out to them as a member.

It should be noticed that when an application is made to the court under this section the company is the proper respondent and the directors should not be made parties. This is so notwithstanding that their unjustifiable acts at board meetings may have conduced to the application. Unless they are joined as parties to the application at their own request, the court has no jurisdiction to make a punitive order against them for payment of the costs of the motion: see *In re Keith Prowse & Company Limited* [1918] 1 Ch. 487.

Next week I propose to discuss some of the numerous cases where registration has been obtained by some fraud or misrepresentation on or to the company by the transferor, and rectification has been ordered in consequence.

A Conveyancer's Diary.

Trust Corporations and Other Paid Trustees.

In these days, when trust corporations are so often appointed to be trustees, it is of some interest to consider the position of such corporations having regard to the fact that they are paid for their services.

Of course, a trust corporation is not entitled to charge for work done in connection with the trust any more than any other trustee. Both may employ solicitors and others to act for them and have a very wide discretion in that regard, but trustees cannot themselves charge the trust estate for professional or quasi-professional services, and trust corporations are in the same position as other trustees in this connection. Nevertheless, the instrument creating the trust may provide for payment to the trustees, and, of course, generally does so where a corporation is appointed as trustee.

The question which I wish to discuss this week is as to the liability of a paid trustee as compared with one who is unpaid.

The subject is an interesting one.

There are two authorities to which I may draw attention, but before doing so it may be as well to look at the statutory provisions regarding the liability of trustees generally.

By s. 30 (1) of the T.A., 1925, it is enacted that—

> "A trustee shall be chargeable only for money and securities actually received by him . . . and shall be answerable and accountable only for his own acts receipts neglects and defaults and not for those of any other trustee . . . nor for any other loss unless the same happens through his own wilful default."

Then there is s. 61, which must be considered:—

> "If it appears to the court that a trustee whether appointed by the court or otherwise is or may be personally liable for any breach of trust whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

That appears to be plain enough, but it seems that, where trustees are paid, there is an especial liability laid upon them which does not rest upon trustees who are acting voluntarily.

I need only refer to two authorities.

In *Re Windsor Steam Coal Co.* (1901) *Ltd.* [1929] 1 Ch. 151, the facts were that the selling agents of a colliery company which had sold its undertaking and was being voluntarily wound up claimed £19,088 damages for an alleged breach by the company of the agency agreement. There had, as the court held, been no such breach. The liquidator consulted the solicitors of a large shareholder, who was opposed to the claim, and they said they had advised their client that there was a valid claim, but that the amount of damages was uncertain. Without taking further advice or obtaining the opinion of the court (a course the liquidator had recognised to be open to him) the liquidator settled the claim for £15,000. A summons was taken out by a contributory to obtain repayment of that sum to the company, on the ground that the liquidator had been guilty of misfeasance, and the liquidator, whose *bonâ fides* were not in question, claimed the benefit of the indemnity given to trustees by s. 30 of the T.A., 1925.

On an appeal from Maugham, J., who had held that the liquidator was not a trustee within the meaning of the Act, it was held by the Court of Appeal (without deciding whether the liquidator was a trustee within the meaning of the Act) that, even if he were, he was not entitled to relief.

For my present purpose the case is principally interesting because of the observations of Lawrence, L.J., who held that, even if the liquidator were a trustee, he was disentitled to relief as he was a paid trustee.

I do not propose to enter into the question of the liability of trustees who, acting honestly and upon advice, pay the trust funds or part thereof to parties who are not entitled. That I must reserve for consideration in a future Diary; but I wish here to point out the special position in which trustees stand who are paid for acting, and in this connection I may refer to *National Trustee Co. of Australasia* v. *General Finance Co. of Australasia* [1905] A.C. 373.

In that case trustees who were paid for acting as such, acting upon advice of their solicitors and in the honest belief that they were acting correctly, paid a part of the trust funds to parties who, as it turned out, were not entitled to it. It was held that the trustees could not be relieved.

In the course of the judgment of their lordships in that case, the following significant passage occurs: "It is a very material circumstance that the appellants" (the trustees) "are a limited joint stock company, formed for the purpose of earning profits for their shareholders; part of their business is to act as trustees and executors; and they are paid for their services in so acting by a commission which the law of the colony authorises them to retain out of trust funds administered by them, in addition to their costs . . . The position of a joint stock company which undertakes to perform for reward services it can only perform through its agents, and which has been misled by those agents to misapply a fund under its charge, is widely different from that of a private person acting as gratuitous trustee."

The sentence which I have just quoted was referred to by Lawrence, L.J., in his judgment in *Re Windsor Steam Coal Co.*, and, on the point with which I am now dealing, his lordship said, regarding the position of the liquidator: "He is a Chartered Accountant carrying on business for his own profit; and in the course of such business and as a part of it he undertakes to act as the liquidator of the company at a commission. If, in so acting, he incurs a loss by acting wrongly, although he may have acted honestly, I have come to the conclusion, on the authority of the case I have cited, that the court would decline to hold either that he had acted reasonably or that he ought fairly to be excused for a breach of trust."

The conclusion of the whole matter, therefore, appears to be that where trustees are paid for their services they cannot, if they make a mistake, expect to be relieved from liability even though the circumstances are such that an unpaid trustee would be relieved.

I do not know that anyone can object to that, which seems to me to be only common sense. Not that common sense has much to do with such matters really.

I hope to deal at greater length in another Diary with the general question of the position of trustees who (acting honestly and so forth) in fact pay the trust funds to persons not entitled to them. It is not, I think, quite so easy a question as might appear. I may, however, indicate what the position of a trustee paying the wrong person is, by quoting from the case which is before me now: In *Re Windsor Steam Coal Co.* Lawrence, L.J., put it in this way: "A trustee is always liable for the due application of trust funds received by him, and is accountable for all his own receipts; under the ordinary account he can only discharge himself by showing that he has paid the trust fund to the right person. The question whether he has acted honestly does not seem to me to enter into the question of his liability when he has received moneys which he has himself disbursed to the wrong person. The question whether the trust fund has suffered any 'other loss' within the meaning of the latter part of the section" (i.e., s. 30) "through the wilful default of the trustee does not seem to me to be a question which the court has to consider when dealing with the disbursement by a trustee of trust funds actually come to his own hands."

Landlord and Tenant Notebook.

The New Provisions for De-control.

The Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, now in force, decontrols two kinds of premises, namely, what are commonly called "Class A" houses, and premises with on-licences.

A controversy has arisen, or at all events, conflicting views have been expressed, as to whether a house of which the recoverable rent exceeds, but which is rated at less than the specified figure, or *vice versa*, is in Class A. Among the résumés of the provisions given by daily newspapers, and written, presumably, by skilled lawyers, some favour one view, others the other. And while practitioners do not turn to newspapers for guidance in these matters, their clients do, consulting their lawyers afterwards, and this circumstance justifies an examination of the question in these columns.

The difference of opinion is ascribable to the structure of s. 1 (2) and the number of negatives it contains, in consequence of which some, when they have finished reading it, are under the impression that they are standing on their heads, while others believe themselves to be standing—again, not still—on their heels. I therefore propose to go through the sub-section under slow motion conditions, and to do so from the viewpoint of a tenant of a country house controlled on 17th July, 1933, whose rent (permitted increases included) is £37 a year, while the net rateable value was, on 1st April, 1933, £32. Will that house become unprotected on 29th September, 1933?

The sub-section begins: "As from the twenty-ninth day of September, nineteen hundred and thirty-three, the principal Acts shall not apply to any dwelling-house." So far, we have a general negative enactment, depriving any house which may be controlled of protection. Clearly, our tenant is now standing on his head.

There follows: "unless it is a dwelling-house to which they applied immediately before the passing of this Act or then formed part of such a dwelling-house," whereupon tenant can consider himself back on his heels.

But then comes: "and it is also a dwelling-house of which either the annual amount of the recoverable rent on the appointed day or the rateable value on the appointed day did not exceed," etc., and this brings us to the crucial question. And it seems to me that the answer must be that tenant can maintain his upright posture by seizing upon one of two supports offered to him, so that, although his rent is £37, he is saved by the fact that the rateable value is £32.

Those who have arrived at the opposite conclusion have, I suggest, done so by looking at the sub-section from the point of view of the landlord. The process has probably been as follows: "As from . . . shall not apply to any dwelling-house" would, in itself, restore the lessor's common law rights; "unless . . . a dwelling-house to which they applied immediately before the passing of this Act . . ." would, if the matter rested there, prevent such restoration; the concluding phrase "and it is also a dwelling-house of which either the annual amount . . . or the rateable value . . ." gives the landlord an option, and by satisfying either condition he may prevent the prevention of the restoration of his common law rights. With all due deference to those who disagree with me, I consider that to achieve this result the concluding phrase

would have to be worded " and it is also a dwelling-house of which both the annual amount of the recoverable rent . . . and the rateable value . . . were not less than . . . " ; or " and it is also a dwelling-house of which neither the annual amount of the recoverable rent . . . nor the rateable value . . . exceeded . . . "

I may say that technically and theoretically neither of the above methods is the one we ought to employ. For, as has so often been pointed out, these Acts " apply to things, not to persons " (*King* v. *York* (1919), 88 L.J. K.B. 839 ; *Prout* v. *Hunter* [1924] 2 K.B. 736, C.A.) ; they modify the status of certain dwelling-houses, and inferentially the rights and obligations of those interested therein ; consequently we ought, strictly speaking, to apply the slow motion method to the house. And it then appears that whether, on general grounds, we consider protection tantamount to upside-down and decontrol normal, or, because we are dealing with a " Rent Act," proceed on the supposition that control is to be presumed, the result is the same. In our example, the house would be decontrolled if the sub-section terminated before the word " unless." The " unless " is followed by three descriptive phrases separated (or joined) by two conjunctions. If both conjunctions were " and," our hypothetical house would have to answer to three descriptions in order not to be decontrolled. But one of them is " or " ; *ergo*, two descriptions suffice. One, of course, must be the description given in the descriptive phrase which precedes the " and."

There is another way of approaching the problem. The sub-section may be said, in the language of logic, to divide dwelling-houses into classes, and then to sub-divide one class on two different bases. The divided whole (*totum divisum*) is " dwelling-house " and the first dividing members (*membra dividentia*) or constituent species are (1) " dwelling-houses controlled on 17th July, 1933," and (2) " dwelling-houses not controlled on 17th July, 1933," the basis of this division (*fundamentum divisionis*) being status immediately before passing of Act. The sub-section here contemplates the already existing division of houses into controlled and not controlled, and assigns class (2) to the existing general class of " not controlled." It then proceeds to divide the class (1) it has created, first by reference to rent, and then by reference to rateable value, thus constituting four sub-species, namely, (i) those yielding and rated at more than £35, (ii) those yielding and rated at less than £35, (iii) those yielding more than, but rated at less than, £35, and (iv) those yielding less than, but rated at more than, £35. But, by virtue of the " or " and its position, three of these four sub-species are grouped together, and the result is that there are three sets of conditions in which dwelling-houses controlled on 17th July, 1933, are assigned to the class of the not controlled, namely, either by having the additional attributes of sub-species (ii), (iii), or (iv).

The requirements of the notice to be served if possession is sought (sub-s. (4)) are very clearly stated. I think, however, that it would be advisable to require possession in all cases, even if a new tenancy is contemplated. Serving a notice informing the tenant that possession will be required unless an agreement for a new tenancy is made is more likely to give rise to disputes as to whether negotiations are pending, broken off, or concluded.

Our County Court Letter.

WIVES' CLAIMS TO HUSBANDS' ASSETS.

(*Continued from* 77 Sol. J. 536.)

In *Wood* v. *Wood and another* recently heard at Blyth County Court, the claim was for the delivery up of an insurance policy for £100, and the counter-claim was for £24 (funeral expenses) and £39 for maintenance of the deceased, during the coal stoppage of 1926. The plaintiff's case was that (1) she was married to the deceased in 1915, but there was a separation in 1918, since when she had received no maintenance ; (2) on the 9th January, 1933, the deceased was killed in a colliery accident, and the plaintiff had then been asked to sign an authority for the insurance company to pay the policy moneys to his parents—the defendants ; (3) being administratrix of the estate, the plaintiff had refused to do so ; (4) the defendants were claiming as partial dependants (under the Workmen's Compensation Act), and—if they succeeded—the plaintiff would receive nothing from the colliery company ; (5) if the plaintiff received compensation, she would pay £18 10s. as funeral expenses. In view of the latter undertaking, His Honour Judge Thesiger gave judgment for the plaintiff on the claim and counter-claim, with costs. It transpired that the policy was a £50 " free " policy (issued by a newspaper), the amount being doubled in the event of death from bodily injury.

THE LIABILITIES OF EDUCATION AUTHORITIES.

(*Continued from* 77 Sol. J. 500.)

In the recent case of *Carlyle Publishing Co. Ltd.* v. *Bullen*, at Malvern County Court, the claim was for £25 4s., being the price of photographs for an illustrated article in " Town and Country News." The plaintiffs' case was that (1) their canvasser had called upon the defendant, who had signed a printed form ; (2) a rough draft of the article (and proofs of photographs of his school) were afterwards sent to the defendant, who did not reply to six subsequent letters ; (3) it was therefore assumed that he approved of the photographs, and the plaintiffs made six blocks (5½ by 4 inches), costing £19 16s., and one block (8 by 4½ inches), costing £5 8s., but (4) on receipt of a final proof of the illustrated article, the defendant alleged that he had not authorised its production. The defendant's case was that (1) he had reserved the right (*a*) to accept or reject any photographs ; (*b*) to purchase or reject any blocks—solely for use in connection with an amended prospectus ; (2) he understood these terms were included in the memorandum he had signed, when the canvasser called ; (3) the photographer subsequently called, but only had permission to take three photographs, and he took the rest merely to finish up the plates. His Honour Judge Roope Reeve, K.C., gave judgment for the amount claimed, with costs.

THE REMUNERATION OF DOCTORS.

(*Continued from* 77 Sol. J. 480).

In the recent case of *Hasson* v. *Anderson*, at Oxford County Court, the claim was for £23 6s. 6d., for professional services to the defendant's daughter. The plaintiff's case was that (1) in April, 1932, he began to treat the patient for neuritis, but (as the ray treatment was unsatisfactory) he advised a change of scene ; (2) he therefore arranged for her to stay at his chateau in France, with his mother-in-law, for five weeks ; (3) the charge was £3 a week, in respect of which the plaintiff had remitted 250 francs a week to Le Manoir, Paris ; (4) the defendant's daughter had written expressing her appreciation. The defendant's case was that (*a*) the letter had been written under compulsion, as her daughter had rung up to ask for assistance—otherwise she would have applied to the British Consul ; (*b*) although the daughter was suffering from rheumatism, she had not had enough food, and the hall had been flooded, owing to a stopped drain ; (*c*) the plaintiff had offered her daughter a holiday with his relations, nothing being said about her being a paying guest ; (*d*) if any debt had been incurred, it was not due from the defendant, but from her daughter. His Honour Judge Randolph, K.C., disallowed one item (£5 5s. for money paid) and gave judgment for the plaintiff for £18 1s. 6d. with costs.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

When Charles II died, his trusted adviser, Lord Guilford, the Keeper of the Great Seal, felt his position at Court radically altered. James II did not repose the same confidence in him, and this overshadowing of his influence finally broke down his health, already undermined by the labours of his office. At the coronation he walked "as a ghost with the visage of death upon him, such a sunk and spiritless countenance he had." In court, conscious that his changed situation was notorious, "to shade himself from observation while he sat on the Bench, he held a large nosegay before his face." At last he retired to his country seat at Wroxton, where at first a treatment of mineral waters seemed to relieve him, but soon a relapse came. "He advised his friends not to mourn for him, yet he commended an old maid-servant for her goodwill that said 'As long as there is life, there is hope.' At length, having strove a little to rise, he said, 'It will not do,' and then with patience and resignation lay down for good and all and expired." This was on the 5th September, 1685. While he was at Wroxton, Monmouth's rebellion had been crushed and Jeffreys had set out on the Western Circuit. When the Chief Justice returned in triumph from the Bloody Assizes, the Great Seal that Guilford had held was delivered to him with the style of Lord Chancellor.

THE YORK MINSTER FIRE.

The fire which recently broke out in York Minster recalls a queer case which came on at the York Assizes in 1829, before Mr. Baron Hullock. The prisoner, Jonathan Martin, had set fire to the building one Sunday night, and all the woodwork from the gate to the Archbishop's throne had been destroyed. The evidence was very strange indeed, for Martin declared that he had been inspired to this act in a dream. After petitioning the Lord, he had had a vision of a cloud hanging first over the Minster and then over his lodgings. Thereafter, he believed that he was destined to destroy all things, and heard a voice from heaven commanding him to burn the cathedral on account of the misconduct of the clergy. When he wavered, the voice said, "What thou dost, do well; go forth and complete thy work." In case these and other instances of religious mania were not conclusive, there was evidence that while he had been in the Navy "during the War," he had fallen from the fore-top overboard after the battle of Copenhagen, and had never been the same man since. He had already been in a lunatic asylum and the verdict of the jury sent him back there.

THE SOLDIERS OF THE LAW.

The Inns of Court Regiment which has this year gone into training in Arundel Park, has done well for itself in acquiring as its new Honorary Colonel, Lord Hailsham, South African War veteran and Secretary of State for War. A neat epigram once written in his honour began, if I remember—

"Justitiæ lanceam sapiens gestare solebas:
ars tibi jam Martis fulmina ferre datur."

With this moral support and displaying their initiative by the use of armoured machine-gun carriers of their own contriving, the military lawyers are making a fine show. Looking back at former distinguished patronage enjoyed by the Devil's Own, it is worth noting that Mr. Justice Willes, when a full-blown judge, served in the ranks, and, moreover, allowed himself to be told by the R.S.M. that he "might be a great judge, but he was a damned poor drill." His name recalls that earlier Willes, C.J., who raised a regiment of lawyers to protect the King's person during Prince Charlie's rebellion, and appointed himself colonel, but, the danger being passed, his services were declined. This judge cherished a lifelong ambition to reach the Woolsack, and of his martial venture, a contemporary poet wrote:—

"If you ask why a judge should aspire to command,
I'll tell you—to take the Great Seal, sword in hand."

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Solicitors Act, 1933—Draft Rules.

Sir,—In my letter appearing in your issue of 19th inst., I state "if entries are properly made," etc., but "Experienced" in his example, states "the suggested ruling will apparently show a balance of 2s. 6d.," thus again proving he is inexperienced in making the proper entries.

The cash book entries would be:—

RECEIPTS.

	Office.	Clients.	Bank.
	£ s. d.	£ s. d.	£ s. d.
A. ..	—	899 10 6	899 10 6
B. ..	—	545 7 0	545 7 0

PAYMENTS.

	Office.	Clients.	Bank.
	£ s. d.	£ s. d.	£ s. d.
A. ..	—	899 5 6	899 5 6
B. ..	0 2 6	545 7 0	545 9 6

Therefore, the balance due to clients is 5s.

The ledger balances, of course, showing A in credit 5s. B in debit 2s. 6d.

B, having a credit of £545 7s. only, the proper cash book entries are as above.

Presuming correct entries are invariably made, of course, in ledger as well as cash book, the suggested ruling "covers the requirements," as the solicitor cannot, without knowledge, draw out of clients' column an amount in excess of what moneys he has in hand from a particular client.

This system has been in practice for upwards of thirty years by several solicitors, works easily and accurately, and also enables them to have their balance sheet and accounts to 31st December on 1st January and to 30th June on 1st July in each year. Trust accounts, I agree, should have their separate bank accounts but for solicitors' general business accounts, as suggested by draft rules, it is unnecessary and inadvisable for various reasons.

30th August. CONSULTING ACCOUNTANT.

Statutory Tenants and The Rent Restriction (Amendment) Act, 1933.

Sir,—There is one provision in the Rent Restriction (Amendment) Act, 1933, which should be carefully noted by statutory tenants of business premises, of which the rent or rateable value is between £45 and £105 per annum in London, or between £35 and £78 outside London.

These statutory tenants are now liable to be summarily dispossessed of their holdings on the landlords giving them one month's notice expiring not earlier than the 29th September, 1933.

With regard to statutory tenants receiving a month's notice as above mentioned, it is provided by s. 1, sub-s. (6), of the Rent Restriction Act, 1933, that the remedies and rights —as to compensation for goodwill, or alternatively for new leases—given to tenants of business premises by the Landlord and Tenant Act, 1927, shall be available to them as if they were ordinary lessees of such premises. But it should be clearly appreciated by such tenants that in order to avail themselves of these remedies, they must give formal notices of claim for compensation or a new lease "*within one month after the service of the notice (to quit) on the tenant.*" It is imperative that the notices of claims should be given and the subsequent proceedings commenced, within the periods prescribed by the Act of 1927, as after these periods have elapsed the High Court has decided that nothing whatsoever can be done by the tribunals to revive the rights of a tenant.

Temple, E.C.4. S. P. J. MERLIN.
29th August.

Costs—Registered Land.

Sir,—When I saw your article on this subject in your issue of the 19th instant, I hoped that you might have made some comment on a point which has often occurred to me.

The remuneration prescribed by the Solicitors' Remuneration (Registered Land) Order, 1925, is expressed (para. 1 (*h*)) to cover the preparation or perusal of the contract or conditions of sale. The Order purports to be made under s. 146 of the Land Registration Act, 1925, which section provides that "the remuneration of solicitors in conveyancing and other non-contentious business under this Act" shall be prescribed by general orders.

I submit that the preparation or perusal of a contract is not "business under this Act," and that an order prescribing a scale of remuneration to cover that work is therefore *ultra vires*.

22nd August. J. W. A. B.

[It is not considered that there is anything in the point raised by our correspondent. Inasmuch as the preparation or perusal of the contract or conditions of sale of registered land is part of the business connected with the sale of that land it seems that it must be "business under this Act." There appears to be no reason, therefore, why a scale of remuneration for completed business connected with the sale of registered land should not cover all of the business relating to that sale, including the preparation or perusal of the contract or conditions as well as the actual attendances at H.M. Land Registry, etc.—Ed., *Sol. J.*]

Reviews.

More from a Lawyer's Notebook (Anonymous). 1933. Crown 8vo. pp. 240. London: Martin Secker. 5s. net.

This pleasant miscellany of wit, philosophy, worldly wisdom, personal reminiscence and critical reflection, follows and continues the little volume which delighted the discriminating this time last year. Let not readers skip the prefatory note without surprise at the physical disabilities under which this book was composed and gratitude that while Browning's Grammarian under similar circumstances ground at grammar, the lawyer can still taste for himself and share with others the leisurely pleasures of a mind both cultivated and robust. His incisive comments on all manner of subjects, his racy anecdotes and his clear-cut opinions make this a book which one cannot open at any page without refreshment and mental stimulus. In his note on the "Ethics of Reviewing," he hints that it is almost a custom of the trade to review a book without reading it. Even if this could be established, his is the sort of book which would make its observance impossible. It is not merely a book that you should read; it is a book which, once in your hands, you cannot help reading.

Annual Digest of Public International Law Cases, 1923–1924. Edited by Sir John Fischer Williams, C.B.E., K.C., of Lincoln's Inn, Barrister-at-Law, and H. Lauterpacht, LL.D., Dr. Jur., Dr. Sc. Pol. 1933. Demy 8vo. pp. xlviii and (with Index) 468. London: Longmans, Green & Co. 42s. net.

The publication of this volume fills the gap in the chronological series of the Digest, which is now continuous from 1919 to 1928. It is a work of very great value to the international lawyer.

The present volume is, *inter alia*, concerned with cases arising out of the changes in national sovereignty due to the Great War and its *sequelæ*. Case 1 is upon the applicability of a decree of the Regency Council of the Kingdom of Poland, which functioned during the German occupation, to parts of Poland never subject to the Council's jurisdiction. The Polish Supreme Court decided that it did apply, a reasonable and workable view of the law.

In Case 7 the Mixed Tribunal of Cairo had to concern itself with the extinction of the American Republic, and the ownership of moneys deposited in an Egyptian bank as a subscription to a loan issued by that Republic. The subscriber was held to be entitled to the return of the money. "The Soviet States declare themselves absolved from the obligation of paying debts contracted by the Governments which they replace; and consequently it is not possible to require those who were in relation with the former Governments to take account of the Soviet State."

One test of a work such as this is to examine it closely in some phase having special interest for the person using it. The reviewer, taking the section on extradition, finds it exceedingly useful. Not only the reports are well selected, and upon important points, but the notes are most informative. The Swiss decisions on political offences are of particular value and interest.

"Judge of instruction" (Case 157) is a rather awkward rendering of "*juge d'instruction*"; the real English equivalent is "examining magistrate."

Books Received.

The Rent and Mortgage Interest Restrictions Acts, 1920 *to* 1933. Seventh Edition. 1933. By Archibald Safford, of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xxxi and (with Index) 270. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

Report of the Departmental Committee on Housing. 1933. London: H.M. Stationery Office. 1s. 3d. net.

Tax Cases. Vol. XVII, Pt. IX. 1933. London: H.M. Stationery Office. 1s. net.

The Brown Book of the Hitler Terror. Prepared by The World Committee for the Victims of German Fascism. 1933. Crown 8vo. pp. 352. London: Victor Gollancz, Ltd. 5s. net.

Trust Accounts. Fifth Edition. 1933. By Pretor W. Chandler, Master of the Supreme Court. Demy 8vo. pp. xxiv and (with Index) 394. London: Butterworth and Co. (Publishers), Ltd. 15s. net.

The Children and Young Persons Act, 1933. By The Hon. Dougall Meston, of Lincoln's Inn, Barrister-at-Law. 1933. Medium 8vo. pp. xliv and (with Index) 134. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 7s. 6d. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XV. Pt. III. August, 1933. London: Society of Comparative Legislation. Annual subscription £1 1s.

The Juridical Review. Vol. XLV. No. 3. September, 1933. Edinburgh: W. Green & Son, Ltd. 5s. net.

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Agreement to Waive Mortgage Interest—Liability for Income Tax.

Q. 2800. A owns a farm and mortgages it to B, his brother. Owing to lack of funds A is unable to pay any interest to B, who has agreed to forego same for the present. The farm has been assessed for income tax on the interest, but A contends he is not liable to pay same until the interest has been actually paid. The Revenue, however, claim payment until the interest has been definitely waived. Are they correct or not? Apart from the above A is not liable to pay any tax.

A. We regret to have to give the opinion that the inspector of taxes is technically correct in his claim. The question is governed by r. 19, All Schedules, which deals with interest "payable wholly out of profits," and provides that the person "*entitled*" to such interest shall not be taxable, but that the whole profits or gains shall be assessed and charged with tax on the person "liable to pay." There being no consonance for the waiver, B would at any time be entitled to claim any arrears of interest not statute barred, and in case of B's death it might be obligatory on his personal representatives to try and enforce payment of the arrears, and from any such payment A or his representatives could deduct interest, and if A had never been assessed for the years in which the interest was payable the Inland Revenue might find a difficulty in getting the tax.

Will—Annuity—Whether Settlement Created or Not.

Q. 2801. A testatrix by a home-made will, after appointing her sister, E.L., executrix and bequeathing certain legacies, continued in the following words: "I give and bequeath all my real and personal property of what nature or kind soever not hereinbefore otherwise disposed of to my sister E.L. and from the proceeds thereof to pay to my niece A.B.B. the annual sum of £26 by monthly payments." The testatrix died in March, 1931, and her will was proved by the executrix in the following May. The testatrix died possessed of a freehold house which formed part of her residuary estate, and in November, 1931, E.L. executed an assent vesting the property in herself for all the estate and interest of the testatrix at the date of her death. E.L. has continued to pay the annuity since the death of her sister and now proposes to put up the property for sale by auction. The question arises whether the wording of the will as quoted above constitutes the land settled land or not. A somewhat similar case is raised on p. 95 of "Further Points in Practice" (1928-30), and in that case the opinion is expressed that the land is not settled land, and that the executors could sell as trustees for sale; in the present case, however, E.L., having executed a vesting assent, cannot, it is submitted, sell as personal representative. The estate is a comparatively small one, and it is desired to incur as little expense as possible.

Your opinion is asked:—

(1) Whether under the circumstances the land is settled land?

(2) If not, can E.L. sell as beneficial owner, or would it be wiser to endeavour to obtain from the annuitant a release of the property from the annuity prior to offering the property for sale?

A. We express the opinion that the land is settled, seeing that it is charged with the payment of the annuity (S.L.A., 1925, s. 1 (1) (v)). We gather that E.L. has executed a simple assent in her own favour. This was incorrect; she should have executed a vesting assent in her own favour as being the person having the powers of a tenant for life (S.L.A., 1925, s. 20 (1) (ix)). We agree that E.L. is no longer in a position to make title as personal representative. She should make title under the machinery of the Settled Land Act, which will involve the appointment of an additional trustee, or, to speak more accurately, will involve the appointment by E.L. of herself and another trustee (S.L.A., 1925, s. 30 (3)), and an amendment of the assent already executed to make it conform with the statutory requirements. As a purchaser from E.L. in the guise of absolute owner would appear to be fully protected (A.E.A., 1925, s. 36 (7)), it would perhaps be possible to sell in that manner, but we do not think that it should be done because the sub-section does not make the assent conclusive (but only sufficient) evidence. The case referred to in "Further Points in Practice" is not on all fours, dealing, as it does, with the question of whether land is "settled" or not for the purposes of the transitional provisions contained in L.P.A., 1925, Sched. I, Pt. IV, paras. 1 (2) and 1 (3). In view of S.L.A., 1925, s. 17, we do not think that a release of the annuity will much simplify matters. Presumably the assent which has been executed must for the purposes of that section be regarded as a vesting instrument.

Copyholds—Statutory Vesting of Freehold in Sole Beneficiary of Copyholder in Fee—Whether any Fine Payable by reason thereof.

Q. 2802. AB was the copyholder in fee on the 31st December, 1925, subject to a conditional surrender entered on the court rolls. By deed, dated 28th February, 1906, he covenanted to stand seised according to the custom of the manor of the equity of redemption in the copyhold property to the use and behoof of CD in customary fee simple, and he and CD thereby further charged the property in favour of the mortgagee. Will you please say whether in these circumstances a fine became payable on the statutory vesting on the 1st January, 1926, in CD.

A. In our opinion no fine became payable by reason of the statutory vesting. The copyholder in fee (AB) was a trustee for CD, and thus the latter took the legal estate on 1st January, 1926 (L.P.A., 1922, Sched. XII, para. 8 (*g*)). Proviso (vi) to para. 8 of this Schedule, which makes fines and fees payable when the freehold legal estate vests in some person not the copyholder in fee, does not apply when there was in fact a copyholder in fee (see proviso (viii)).

Quit Rents.

Q. 2803. Can quit rents be barred if unclaimed and unpaid for twelve years? Mortgagees are in possession of certain copyhold property, but have never been admitted. The mortgagor was admitted in 1892 and the mortgagees took possession about twenty years ago. The quit rent was paid up to Ladyday, 1917, and since then application for payment has been made in 1918, 1920 (two demands), and in subsequent years, but no rent paid, but it is not absolutely certain whether these demands were made to the mortgagor or the mortgagees' solicitors, although there was a note on the rental "Apply Mortgagees' Solicitors." In 1927 a further demand was addressed to the mortgagor and this was returned through the

dead letter office. A demand has this year been made to the mortgagees' solicitors for the quit rent, and they state that as they have had no demand for twelve years that this quit rent is barred, and they quote as their authority "Scriven on Copyholds," 6th ed., p. 209, which states that quit rents are within the Real Property Limitation Act, 1874, and therefore title to them extinguished after twelve years' non-payment. We have referred the mortgagees' solicitors to "Wolstenholme and Cherry's Conveyancing Statutes," 11th ed., vol. I, note on s. 139 of L.P.A., 1922, p. 16, and note at foot of p. 77, from which it appears that on extinguishment all arrears can be claimed. We have invited a voluntary extinguishment. Can we on extinguishment claim redemption of quit rent and amount of quit rent actually in arrear, both of which the mortgagees dispute ?

A. *Howitt* v. *Harrington* (*Earl of*) [1893] 2 Ch. 497 is an authority that quit rents are included in the word "rent" in the Real Property Limitation Acts, 1833 and 1874, and that non-payment for twelve years acts as an extinguishment. The view that the Acts operate as a total extinguishment is borne out by the case of *Sykes* v. *Williams* [1933] 1 Ch. 258, C.A., a rent-charge case. In our view the legal position is that there are no arrears of the quit rent when the recovery of it has become barred.

Liability of Mortgagee Selling for Property Tax, Water Rate and General Rate on Tenement Houses.

Q. 2804. We are acting for a mortgagee of freehold property, who is selling under his statutory power of sale. The property consists of two dwelling-houses let in tenements, and the mortgagee has not entered into possession or collected any rents. The principal and arrears of interest very greatly exceed the value of the property, and the latter has in fact been sold for considerably less than the amount due under the mortgage. The owner of the property left the district many years ago, and the Inland Revenue Authorities, the water company and the urban district council have been for some years collecting sums due to them for property tax, water charges and rates respectively, direct from the tenants. In each case there are still large sums due to such authorities for arrears, and on behalf of the mortgagee we have received demands from each authority asking for payment, out of the proceeds of sale, of the full amount now due. We take the view that as our client is only a mortgagee and as he has not entered into possession, he cannot be held responsible for payment of these arrears, when he has not obtained by sale of the properties sufficient to cover principal and interest due to him. The sale was conducted by public auction, and there is no possible doubt but that the full value of the property at the present day has been received. Will you kindly advise : (1) Is the mortgagee personally responsible for payment of these charges ? and (2) What is the position of the purchaser ? If the mortgagee does not pay, are the arrears due in respect of property tax, water rate and general rate or any of them chargeable against the property and recoverable from the purchaser ?

A. As regards property tax, the tenants, from whom the defaulting landlords' tax is collected, may deduct the amount paid from any subsequent payment of rent (r. 8 of No. VII, Sched. A, Income Tax Act, 1918) ; the purchaser therefore will be entitled to have a clear sheet. As regards water rate the Water Companies (Regulation of Powers) Act, 1887, is probably applicable to the particular company, and if so, under s. 4 of that Act a rate payable by an *owner* of premises is a charge on the premises. As regards general rate. If the owner of a tenement house is assessed under s. 23 of the Rating and Valuation Act, 1925, and the rating authority proceeds under s. 15, which authorises recovery of arrears of rates payable by any person rated by collection of rent after service of a notice on a person paying rent "to the person from whom the arrears are due"—the better opinion is (although there is no direct authority on the point) that the section does not give power to the rating authority to collect rent after the date when the rent ceased to become payable to the person in arrear with the rates, i.e., after the conveyance of the property. If the owner is rated under s. 11 of the Act of 1925, the general opinion is that the rate may be collected notwithstanding change of ownership.

Will—Precatory Trust—Settlement—No Life Tenant—Procedure.

Q. 2805. A testatrix, who executed her will in January, 1933, and died in the same month, devised a house unto her trustees, upon trust to allow her son A and her grandson B to have the joint use thereof, rent free, until her said grandson B had attained the age of twenty-five years. Upon B attaining the age of twenty-five years, testatrix devised such house unto him absolutely, but it was her wish that he should allow her said son A to reside with him in such house as long as her said son should so desire. B is now about eighteen years old. We shall be glad of your opinion as to the correct procedure to carry out these trusts and as to what documents it will be necessary to prepare and when ?

A. Subject to such considerations (if any) as might arise upon a perusal of the will as a whole, we express the opinion from the use of the word "absolutely" in the devise to the grandson (though the use of that word is not conclusive upon the point) that there will be no trust affecting the property in the hands of the grandson in favour of the son of the testatrix. Merely a wish is expressed not amounting to a precatory trust. There is a settlement but no life-tenant or person having the powers of one. The trustees of the settlement (we are not in possession of sufficient information to say who they are) will, therefore, have the powers of a tenant for life (S.L.A., 1925, s. 23), and the property should (strictly speaking) be vested in them by way of vesting assent under S.L.A., 1925, s. 6. On B attaining the age of twenty-five he will be entitled to a conveyance from them (under S.L.A., 1925, s. 7 (5)). It is suggested, however, with a view to the saving of expense, that no action be taken until B attains the age of twenty-five, when the executors can assent in his favour as being absolutely entitled.

Bank—Equitable Mortgage by Deposit—Letter of Release—Sufficiency of.

Q. 2806. A, the owner of a farm contracted to sell a plot of land to B, for whom I act. Before the abstract was examined with the deeds, A deposited the deeds with his bank to secure an overdraft, and signed a memorandum of charge, and I had to examine the deeds at the bank. I have asked that either the bank should join in the conveyance, or that the memorandum should be discharged prior to completion. A's solicitor submits that if the bank give a letter that they have no claim on the plot, and a memorandum of the sale is endorsed on the title deeds, B will be protected. The purchase money is only £28, but a house may be erected on the plot by the purchaser. I shall be glad if you will kindly say what course I should adopt.

A. Our subscriber will find the position discussed in "Everyday Points in Practice," Pt. V, s. 7, cases 2 and 3, at p. 326, and in "Further Points in Practice," Pt. V, s. 2, case 5, at p. 53, from which this reply is in part extracted. The purchaser is no doubt entitled to the concurrence of the bank in his conveyance if the charge is not discharged before completion or the property is not by then formally released under the seal of the bank. It is, however, a common practice to accept such a letter as that suggested by the vendor's solicitor, and the practice is no doubt a safe one when dealing with one of the well-known great banking companies, but depends on the fact that they are solvent beyond all question, and that it is not their custom to charge or deal with their rights as depositees, so that it is therefore in the most extreme degree

unlikely that anyone can or will repudiate the letter. If banks were as liable to fall into difficulties as they were in the middle of last century, it would no longer be a safe practice, for on the face of such a letter, no consideration is given for the release. As to possible dealings with his security by a mortgagee by deposit, see *Ex parte Abel Smith* (1842), 2 Mount. D. and De.G., 587. We think the letter may be accepted with confidence.

Rent Payable in Advance—Mortgagee.

Q. 2807. With reference to the article as to prepayment of rent in your issue of 20th May, I should be glad if you would advise me as to the position with regard to rent payable in advance in accordance with the covenant contained in the lease or tenancy, and the position with regard to mortgagees.

A. The position of a mortgagee depends on whether the mortgage was executed after or before the lease. If it was executed after the lease then the mortgagee is, it is considered, bound by and his claim is subject to any payment properly made in accordance with the covenant before he takes possession of the property or appoints a receiver. If the lease is made after the mortgage the lessee must take the risk. If it is made under the statutory power, there is no authority given to the mortgagor to reserve rent in advance. If the statutory power is negatived in the mortgage the lessee gets no title against the mortgagee unless the latter assented to or confirms the lease.

Income Tax—Half Income of Land to Life Owner, Half in Reduction of Mortgage.

Q. 2808. Under the will of A, leasehold properties were left to B for life and the will contained an express direction on the trustees that they were only to pay half of the income to B, the remainder being paid in reduction of the mortgage on the property. In B's income tax under the charges heading, has been put the interest on the mortgage which, of course, diminishes each year, and the capital sum retained by the trustees, in accordance with the direction under the will and which, of course, increases each year as the mortgage diminishes. The inspector of taxes has refused to allow as a charge the deduction towards repayment on the mortgage on the ground that it is a sinking fund. My contention, of course, is that B in fact has only been left half the life interest. The inspector of taxes gives no authority for his refusal, and I am unable to give any authority for my contention.

A. We are unable to find any authority on the point raised, but on principle the question appears to hinge on the interpretation of the will. If the true construction of it is to receive half the gross rents less half the rent payable to the superior landlord and half the other outgoings including repairs it would seem that B's statutory income from the property is half the Sched. A assessment, less half the ground rent from which of course tax is deducted and has to be brought into account. If, however, the construction is that B is entitled to half the net income after payment of mortgage interest, then it would seem that B's income is half Sched. A, less half ground rent and half mortgage interest. It is considered that as regards the balance, whichever is the construction of the will, the contention of the inspector is correct.

Appointment of New Trustees—Omnibus Transfer of Mortgages.

Q. 2809. A trustee of the will of a testator who died in 1915 has recently retired from the trusts, and two new trustees have been appointed. There are thirty mortgage securities, forming part of the trusts estate, which are vested in the retiring trustee, and two continuing trustees, and the deed of retirement and appointment contains the usual recital that it is intended that the mortgage securities shall be forthwith transferred into the names of the continuing trustees and the new trustees. In order to save stamp duties and costs, it is suggested that the mortgages should be transferred by one deed (stamp 10s.), in a form somewhat similar to the precedent, on p. 609 of Vol. 10, of "The Encyclopædia of Forms and Precedents," 2nd Ed., but it is observed that Note (*a*) to the precedent states that in ordinary cases this would be improper. The solicitors for the trustees do not see any impropriety in the method of transfer suggested and propose to adopt it. Do you see any, and if so, what objections to the transfers of the thirty mortgages being effected by one deed?

A. We see no objection to the suggested omnibus transfer except the merging of the titles to the various properties charged which might prove objectionable to the mortgagors, only one of whom can (after final redemption) hold the transfer, the others having to be contented with a statutory acknowledgment (? and undertaking).

Personal Settlement—Personal Representatives of Surviving Trustee Holding the Funds—T.A., 1925, s. 18 (2)—Whether the Representatives should Appoint Themselves, Execute a Declaration of Trust or Take no Action.

Q. 2810. A, the sole surviving trustee of a personal settlement, which contains no directions with regard to the appointment of new trustees, has recently died, having appointed B and C executors of his will. B and C have agreed to act as trustees of the settlement. Should they execute a deed appointing themselves trustees or will it be sufficient if they sign a declaration that they hold the trust funds which now stand in their names upon the trusts of the settlement?

A. B and C are "capable of exercising or performing" the trusts "until the appointment of new trustees" (T.A., 1925, s. 18 (2)), and as the trust funds stand in their names, equity would enforce the trusts as against them. Strictly speaking, therefore, no action is necessary. If any action is taken we should prefer that they appointed themselves to be the trustees as they would then cease to be merely persons capable of exercising or performing the trusts and definitely become the trustees. No saving would be effected by adopting a declaration of trust in lieu of an appointment, as either document would attract a 10s. stamp.

Liability of Colliery Company.

Q. 2811. We are acting for a colliery company, who, on part of their works have a tip which adjoins the highway. They have not tipped on this site for many months. The highway is not adequately fenced, and the inhabitants from time to time trespass, thereby causing stones and other material to roll on to the highway. A number of prosecutions have been instituted, and the trespassers have been fined. Notices have been put up, prohibiting entry upon these banks. A claim has now been made upon the clients by a man who alleges that whilst cycling along the road at night he collided with what he alleges was a piece of the outcrop which had rolled from the tip. He claims damages. We should appreciate your view on the question of legal liability, dealing especially with the question as to (*a*) whether our clients are liable; and (*b*) whether the real negligence is not that of the man who should have been riding his bicycle in such a manner that he should see what was on the road (see *Baker* v. *E. Longhurst & Sons Ltd.*, *Times*, 22nd June, 1932; 76 Sol. J. 466).

A. (*a*) The opinion is given that the colliery company are not liable, as the presence of the stones on the land is not an unnatural user, so as to bring them within the rule in *Rylands* v. *Fletcher*. There is also no negligence on their part, as the tip is disused, and they evidently take adequate precautions to prevent trespassing. The mere omission to fence is not negligence, nor does it constitute a nuisance. The cyclist's claim will fail on the ground that he will be unable to prove that the accident was not due to the intervention of a third person, e.g., a trespasser.

(*b*) It is agreed that the real negligence is that of the cyclist, in accordance with the case quoted.

Obituary.

Mr. E. F. TURNER.

The late Mr. E. F. Turner, whose death was announced shortly in last week's issue, was the third son of Richard Edward Turner, Bencher of the Inner Temple, and was educated at the Merchant Taylors' School. He was articled in 1867 to Septimus Davidson and admitted in 1872. From 1875 he was a partner in the firm of Hacon & Turner (now E. F. Turner & Sons), of 115 Leadenhall-street, E.C., retiring in 1913.

He was a member of the Council of The Law Society from 1906 to 1909, having previously been for three years Lecturer to the Society, and was a Director of the Law Life Assurance Society from 1897 to 1910. In 1900 he joined the Board of The Solicitors' Law Stationery Society, and took an active part in the management of its affairs until within a few days of his death. He acted as Solicitor to the London and India Dock Company and later to the Port of London Authority on its formation in 1908. Becoming a member of the Justinians in 1883, he took a prominent part in the development and activities of the Society and in May last was presented with a silver cup in celebration of his fifty years of membership. He was also a member of the City Law Club since 1884. He was the author of "The Organization of a Solicitor's Office" and other legal works and of several books of humour. Among many charities of which he was an active supporter may be mentioned the Poplar Hospital, in which there is a bed named after him. He was one of the oldest members of the Athenæum and of the M.C.C.

His numerous activities and his charm of character brought him a host of friends, who will long remember his unfailing geniality, his strict integrity, and his active sympathy with all those with whom he came in contact. All who were privileged to know him will feel the loss of the encouragement which his presence always brought.

He leaves a widow and three sons, two of whom, Mr. Maurice E. Turner and Mr. Robert R. J. Turner, are members of the firm of solicitors which bears his name. The third, Mr. Cecil W. Turner, was called to the Bar in 1898 and is a Bencher of Lincoln's Inn.

Mr. E. T. ALMS.

Mr. Edward Theodore Alms, solicitor, senior partner in the firm of Messrs. Alms & Young, of Taunton, died on Monday, 21st August, at the age of seventy-five. Mr. Alms served his articles with Mr. George Phillbrick, of Basinghall-street, E.C., and was admitted a solicitor in 1881. He went to Taunton and two years later bought the practice of Mr. Josiah Easton, entering into partnership with Mr. Biddulph Pinchard the following year. In more recent years he had been in partnership with Mr. Ivor Jones, who died in 1927, and Mr. R. W. Young, the present partner. Mr. Alms had been Clerk to the Taunton County Bench for nearly fifty years, and had also held the appointments of Registrar to the Taunton Probate Court and Clerk to the Income Tax Commissioners. In his younger days he was a keen rifle shot, and was a member of the England team on two occasions.

Mr. G. H. BARDSLEY.

Mr. George Henry Bardsley, solicitor, of Ashton-under-Lyne, died on Wednesday, 23rd August, at the age of seventy-one. Mr. Bardsley served his articles with Messrs. Darnton and Bottomley, of Ashton, and was admitted a solicitor in 1890. He practised on his own account, but during the war he joined Messrs. Bromley & Hyde (now Bromley, Hyde and Robinson). Afterwards he again practised alone and continued until his death. He was a member of the Ashton and Manchester Law Societies, and from 1891 to 1896 he was Honorary Secretary of the Ashton, Stalybridge and District Law Association.

Mr. T. H. T. CASE.

Mr. Thomas Henry Towler Case, O.B.E., Barrister-at-Law, of Temple-gardens, Temple, and Norwich, died recently at his home at Norwich at the age of forty-seven. Mr. Case, who was educated at Norwich Grammar School and Queen's College, Oxford, was called to the Bar by Lincoln's Inn in 1911. He was Counsel for the Board of Education, and during the war assisted in the Departments of the Procurator-General and the Treasury Solicitor.

Mr. D. E. GRIFFITHS.

Lieutenant-Colonel D. E. Griffiths, V.D., solicitor, of Oldham, died on Wednesday, 23rd August, at the age of ninety-two. Educated at Cardigan Grammar School, he was in the Town Clerk's office at Tenby before going to Oldham in 1865. Admitted a solicitor in 1883, he was at one time Assistant Town Clerk and afterwards practised on his own account. He was a member of the Oldham Town Council for many years.

Mr. A. WALKER.

Mr. Arthur Walker, solicitor, of New Mills, died in a Manchester nursing home on Thursday, 24th August, at the age of sixty-eight. He was admitted a solicitor in 1888, and practised in partnership with Mr. R. Ashworth, as Messrs. Arthur Walker and Ashworth. Mr. Walker was Clerk to the Hayfield Board of Guardians for twenty-five years, and was also for a time Clerk to the Ludworth, Mellor and Lower Marple Sewerage Board.

Rules and Orders.

THE RATING AND VALUATION ACT (PRODUCT OF RATES AND PRECEPTS) AMENDMENT RULES, 1933,* DATED AUGUST 1, 1933, MADE BY THE MINISTER OF HEALTH UNDER SECTIONS 9 AND 58 OF THE RATING AND VALUATION ACT, 1925 (15 & 16 GEO. 5, C. 90), FOR AMENDING THE RATING AND VALUATION ACT (PRODUCT OF RATES AND PRECEPTS) RULES, 1929.

77,145.

The Minister of Health, in exercise of the powers conferred on him by Sections 9 and 58 of the Rating and Valuation Act, 1925, and of all other powers enabling him in that behalf, hereby makes the following rules:—

1. These rules may be cited as the Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules, 1933, and shall be construed as one with the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1929,† hereinafter in these rules called "the principal rules."

2. The principal rules shall have effect as though in paragraph (2) of Rule 1 thereof the definition of "gross rate income" were amended by the insertion, after the word "recoverable" in paragraph (*b*) of the said definition, of the words "under Section 36 (2) of the Act, whether by virtue of Section 37 (10) of the Act or otherwise, or under or by virtue of Section 12 (6) of the Railways (Valuation for Rating) Act, 1930,‡ or."

3. Copies of the principal rules printed under the authority of His Majesty's Stationery Office may be printed with any additions, omissions or substitutions directed to be made by these or any other amending rules, but with a footnote in each instance referring to such amending rules, and the principal rules so printed may be cited as the Rating and Valuation Act (Product of Rates and Precepts) Rules.

Given under the official seal of the Minister of Health this first day of August, nineteen hundred and thirty-three.

R. B. Cross,
(L.S.) Assistant Secretary,
Ministry of Health.

* These rules supersede the provisional rules which were made on the 24th day of March, 1933.

† S.R. & O. 1929 (No. 12), p. 1248.

‡ 20-1 G. 5, c. 24.

CHANGE OF VACATION JUDGE.

Mr. Justice Atkinson concluded his sittings in the Vacation Court on Wednesday, 30th August. For the remainder of the period the judge will be Mr. Justice du Parcq.

Legal Notes and News.

Honours and Appointments.

Mr. FRANCIS J. R. MOUNTAIN, solicitor, Town Clerk of Gillingham, Kent, has been appointed Town Clerk of the Metropolitan Borough of Bermondsey. Mr. Mountain was admitted a solicitor in 1927.

Mr. A. C. CAFFIN, solicitor, of Worcester, has been appointed Assistant Solicitor on the legal staff of the Norfolk County Council in succession to Mr. S. Townsend, resigned. Mr. Caffin was admitted a solicitor in 1932.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Henry Valentine Labrow Stanton, solicitor and journalist, of Holloway, N., left £16,834, with net personalty £12,681. He left £100 to the Newspaper Press Fund; £100 to the Cricketers' Fund Friendly Society; and £50 to the London Press Club.

Sir Anthony Hope Hawkins, barrister-at-law, playwright and novelist, of Walton-on-the Hill, left estate of the gross value of £29,044, with net personalty £25,715. He left £100 to Elizabeth Bruce "as a token of my gratitude for her service and friendship" and £250 to the Pension Fund of the Incorporated Society of Authors.

Mr. Ernest Digby Gates, solicitor, of Shoreham-by-Sea, left £7,862, with net personalty £4,589.

Mr. Frank Oliphant Tomkins, solicitor, of Copthall-court, E.C., and Maidenhead, left £16,989, with net personalty £13,403.

Mr. Alfred Brett, solicitor, of Harrogate, left £16,084, with net personalty £12,170.

Alderman Henry Edwin Ferens, solicitor, of Crossgate Moor, near Durham, left £23,082, with net personalty £20,784.

Mr. Guy Hopes Heelis, solicitor and Town Clerk of Appleby, Westmorland, left £4,147, with net personalty £1,102.

Mr. Charles Phillipa Jones, solicitor, of St. Albans, left £2,055, with net personalty £1,577.

Sir Alexander Wood Renton, G.C.M.G., K.C., of Kensington, late Chief Justice of Ceylon, left personal estate in Great Britain valued at £7,286.

MR. JUSTICE ROCHE IN CANADA.

Mr. Justice Roche delivered an address to the Canadian Bar Association at Ottawa last Wednesday on "Commerce and the Law in England."

THE LAST GRAND JURY.

We are indebted to *The Times* of 30th August for the following remarks of Sir Percival Clarke, addressing the Grand Jury summoned for the County of London Sessions, last Tuesday:—

"On 12th September there comes into force an Act called the Administration of Justice Act, and by its first section it abolishes the Grand Jury, and in spite of rival claims that have recently been made, I think I can confidently assert that you constitute the last Grand Jury in the country—certainly in the County of London—to perform its duty to the State.

"I say 'last,' but it is to be observed that a Grand Jury may yet be called to serve in this court if any person is charged under an Act passed in the reign of King Henry VIII, called 'An Acte Concerninge the Triall of Treasons, committed out of the King Majesty's Dominions,' or an Act passed in the reign of King William III to punish governors of plantations in this Kingdom for crimes by them committed in the plantations. These offences are only triable at the Quarter Sessions of London and Middlesex; but so remote is the prospect of such an event that I think you may regard yourselves as the final Grand Jury."

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 14th September, 1933.

	Div. Months.	Middle Price 30 Aug. 1933	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	108	3 14 1	3 9 9
Consols 2½%	JAJO	73¾	3 7 9	—
War Loan 3½% 1952 or after	JD	99¾	3 10 2	—
Funding 4% Loan 1960-90	MN	111½	3 12 0	3 7 5
Victory 4% Loan Av. life 29 years	MS	108¾	3 13 7	3 10 3
Conversion 5% Loan 1944-64	MN	116¼	4 6 0	3 4 5
Conversion 4½% Loan 1940-44	JJ	109¾	4 2 0	2 18 9
Conversion 3½% Loan 1961 or after	AO	98⅞xd	3 10 10	—
Conversion 3% Loan 1948-53	MS	97¼	3 1 8	3 3 9
Conversion 2½% Loan 1944-49	AO	92¼xd	2 14 2	3 2 6
Local Loans 3% Stock 1912 or after	JAJO	86	3 9 9	—
Bank Stock	AO	348½	3 8 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76	3 12 4	—
India 4½% 1950-55	MN	107½	4 3 9	3 17 8
India 3½% 1931 or after	JAJO	84	4 3 4	—
India 3% 1948 or after	JAJO	72	4 3 4	—
Sudan 4½% 1939-73	FA	110	4 1 10	2 10 3
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	107	4 13 5	4 4 10
Canada 3½% 1930-50	JJ	98	3 11 5	3 13 2
*Cape of Good Hope 3½% 1929-49	JJ	99	3 10 8	3 11 8
Natal 3% 1929-49	JJ	94	3 3 10	3 10 5
New South Wales 3½% 1930-50	JJ	94	3 14 6	3 19 10
*New South Wales 5% 1945-65	JD	106	4 14 4	4 6 11
*New Zealand 4½% 1948-58	MS	105	4 5 9	4 0 11
*New Zealand 5% 1946	JJ	109	4 11 9	4 0 9
*Queensland 4% 1940-50	AO	101	3 19 2	3 16 7
*South Africa 5% 1945-75	JJ	111	4 10 1	3 16 8
*South Australia 5% 1945-75	JJ	107	4 13 5	4 4 10
*Tasmania 3½% 1920-40	JJ	99	3 10 8	3 13 6
Victoria 3½% 1929-49	AO	95	3 13 8	3 18 6
*W. Australia 4% 1942-62	JJ	100	4 0 0	4 0 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Birmingham 4½% 1948-68	AO	113	3 19 8	3 7 8
*Cardiff 5% 1945-65	MS	109	4 11 9	4 0 9
Croydon 3% 1940-60	AO	93	3 4 6	3 8 0
*Hastings 5% 1947-67	AO	114	4 7 9	3 14 0
Hull 3½% 1925-55	FA	98	3 11 5	3 12 8
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84½	3 11 0	—
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 2 11
Metropolitan Water Board 3% "A" 1963-2003	AO	86	3 9 9	3 10 10
Do. do. 3% "B" 1934-2003	MS	87	3 9 0	3 10 0
Do. do. 3% "E" 1953-73	JJ	94	3 3 10	3 5 5
*Middlesex C.C. 3½% 1927-47	FA	100	3 10 0	3 10 0
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	84	3 11 5	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	101½	3 18 10	—
Gt. Western Rly. 5% Rent Charge	FA	117½	4 5 1	—
Gt. Western Rly. 5% Preference	MA	99½	5 0 6	—
‡L. & N.E. Rly. 4% Debenture	JJ	96½	4 2 11	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	82	4 17 7	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	98½	4 1 3	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	90	4 8 11	—
Southern Rly. 4% Debenture	JJ	101½	3 18 10	—
Southern Rly. 5% Guaranteed	MA	112	4 9 3	—
Southern Rly. 5% Preference	MA	100½	4 19 6	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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